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ILLUSTRATIONS OF THE ORIGIN OF *CY PRÈS*.

THE remark of Lord C. J. WILMOT in the great case of Attorney-General *v.* Downing in 1767,¹ that "the Court thought one kind of charity would embalm the testator's memory as well as another," and his reference without apparent disapproval to the case of *Da Costa v. Da Paz*,² then recently decided, but since so generally repudiated as an authority,³ seemed to approve the greatest latitude in the application of the doctrine of *cy près*, at a time when more reasonable limits were beginning to prevail. As, however, appears from the context, it was rather an historical résumé; and shortly states in a concise form the prevalent mediæval notions out of which the doctrine of *cy près* in the law of charities was developed, — notions, as we shall see, striking with deepest root into the soil of mediæval society from the earliest period.

The statute of 43 Eliz. c. 4, which, while it did not originate,⁴ codified the law of charitable trusts in its day, and became a sort of Magna Charta of that branch of the law, enumerated the following objects as the only ones which either directly or by analogy were good charitable uses, namely, gifts: —

¹ Wilmot's Notes, i. 33; 1 Jarm. Wills, *243 n.

² Amb. 228.

³ Jackson *v.* Phillips, 14 Allen, 539, 575; Minot *v.* Baker, 147 Mass. 348, 351.

⁴ Stat. 2 Hen. V. c. 1, provided for impotent poor, lazars, &c.; 12 Rich. II. c. 7, and 1 Hen. VII. c. 7, for scholars in universities; 1 Edw. VI. c. 14, for piers and jetties; 2 & 3 Edw. VI. c. 5, for walls and bridges.

"For relief of aged, impotent and poor people, for maintenance of sick and maimed soldiers and mariners, schools of learning, free schools and scholars in universities; for repair of bridges, ports, havens, causeways, churches, sea-banks and highways; for education and preferment of orphans; for or towards relief stock or maintenance for house of correction; for marriage of poor maids; for supportation aid and help of young tradesmen, handicraftsmen and persons decayed; for relief or redemption of prisoners or captives, and for aid or ease of any poor inhabitants concerning payment of fifteens, setting out soldiers, and other taxes."

This statute was passed in 1601, following an earlier act of 1597;¹ but it may be new to many to find in the famous early English poem of the "Vision of Piers Plowman" an enumeration of charitable objects so full and so closely similar to that of the act, that it seems as if the Protestant Parliament of Elizabeth had borrowed the great church-reforming poet's verses for the staple of their enactment. The poet enjoins men to —

"Save their wynnyng
And amende meson-dieux [hospitals] theremyd;
And wikkede [weak] weyes wightly amende;
And mys-eise folke helpe;
And do boote to brugges [bridges] that to-broke were;
Marien maydenes, or maken hem nonnes;
Povere peple and prisons fynden hem hir foode;
And set scolers to scole, or to some othere craftes;
Releve religion, and renten hem bettere." ²

This was written in 1377, and an earlier version (in substance identical) in 1362,³ nearly two hundred and forty years before the act of Elizabeth, but at a period when, if Protestantism were not yet born, the dry bones of the Church were being stirred by the mighty wind of reform, and by popular resistance to clerical abuses; when John Langland's poetry was as potent as Wiclif's Scriptures; and the Statutes of Provisors and Præmunire ensured to England a safe foothold for resistance to Papal aggressions. The differences between the statute and the poem are as significant as their similarities; for while the "meson-dieux" and "helpe of mys-eise folke" in the poem answer more or less exactly to the "relief of sick and maimed soldiers, aged, impotent and poor people" in the statute; "do boote to brugges that to-broke were," "and wikkede weyes wightly amende," to the "repair of bridges, causeways, and

¹ 39 Eliz. ² vv. 4515-4528, Wright ed. ³ Passus VIII. vv. 27-39, Skeat ed.

highways;" "set scolers to scole," to the "maintenance of schools of learning, free schools and scholars in universities;" "or to some othere craftes," to "the supportation, aid, and help of young tradesmen;" "povere peple and prisons fynden hem hir foode," to the "relief and redemption of prisoners or captives, and for aid and ease of any poor inhabitants;" yet the "releve religion" of the poem is narrowed in the act to the "repair of churches;" and the "marien maydenes, or maken hem nonnes" is shorn of the latter clause by the Protestant legislature of the daughter of Tudor King Harry; as indeed it would hardly have become them to have treated that as a charity which her father had regarded as treason, or to have peopled the convents which he had broken up.

While, however, as we shall shortly illustrate, the law of charities had its main roots in the religious notions of the mediæval period, it would be a mistake to look exclusively to the religious or moral side of charity for the origin of our law. "Undoubtedly," says a distinguished jurist,¹ "in one sense charity may be defined to be all the good affections which men ought to bear to each other; but, before the matter becomes the subject of legal cognizance as a charity, there must be a gift to a general public use. This may in some cases embrace the rich as well as the poor."² There is, indeed, but a slight difference in the eye of reason between such property as is devoted to charity and that which is given to ordinary public uses."³ Indeed, the most remarkable point to notice is, how far even some of the objects enumerated by Langland as charitable are of a strictly public character, and by no means limited to the poor, sick, or suffering. Such are the repair of bridges and highways. The necessity of these to a civilized society was certainly keenly felt in the middle ages, probably at no period more so. It was fully appreciated that there was no more important factor towards the security of trade and travel, the development of business and of all the agencies of civil or social improvement, than these nerves of national life; and to their construction and amelioration every incitement was given.⁴ But the idea of treating the performance of these public duties as acts of charity did not come originally from the Church, nor from her religious or even moral re-

¹ Dwight, J., arg. *Rose Will Case*, p. 92.

² Amb. 651.

³ Dwight, *ubi supra*, p. 66. "Neque multum inter se differunt sacerdotium et imperium, neque res sacræ a rebus communibus et publicis." Just. Nov. 7.

⁴ Thus on the bridge at Witham is inscribed, "And the blessid besines is brigges to make." Besant's *London*, p. 66.

quirements. It was an inheritance from the Roman law,¹ undoubtedly entering into England, as other parts of the Roman law did, through the Church (or rather through churchmen), but not from what we may call its religiously charitable side. As is well known, under the code of Justinian full provision was made for the enforcement of charitable duties, not only by the bishop, but on the complaint of any citizen as representing the public exactly as the Attorney-General now represents them; and that perpetuities and the application of *cy près*² were allowed; and as this code came into England through the civilians the public duty stood side by side with the moral and religious as a proper charitable work, which the Church would regard as such.

The limits of this article are too narrow to permit us to trace in any just degree the growth of these two elements of the law of charities as administered by the Church. Suffice it to say that the alms-giving which in the first ages of Christianity had been the natural expression of its spirit and its habitual practice was, we might say, constantly stated by the Fathers as a just ground in the sight of Heaven for its pardon of our trespasses. "After baptism," says Cyprian, "we would have no resource to expiate our continual faults, if the divine compassion had not taught us works of justice and pity as a way of safety, and alms as a means of washing out the stains of our vices." Said Clement of Alexandria: "As many poor as are relieved, so many advocates for you before the Sovereign Judge." And Chrysostom: "Whatever may be thy sins, fear not; thy alms outweigh them all in the balance of the Judge."

As this voluntary alms-giving was organized under direction of the Church into an established system of charity, the objects of public duty inculcated, protected, and enforced under the Roman law fell, as we have said, also under its control. All was fish that came to the net of the successor of Saint Peter; and having disposal of the merits of Christ and the saints, upon which he, as the head of the Church, could draw as upon a bank,³ the view rapidly prevailed that a remission of sins and exemption from their consequences was worked not only by acts of observance towards the Church, but of charity towards men. It is certainly true that

¹ Pandects, Lib. 30, Tit. 1, §§ 117, 122; Lib. 32, Tit. 2, § 5; Lib. 33, Tit. 1, § 6.

² Dig. Lib. 33, Tit. 2, § 17; even in its prerogative form, Lib. 50, Tit. 5, § 4; Wilmot's Notes, i. 33; Jackson v. Phillips, 14 Allen, 539, 575.

³ Clement VI.; Migne, Nouv. Encyc. Theol. xxvii. 123, 124; Southey, Book of the Church, i. 310.

the former class largely predominated; but it is equally true that the latter were recognized as to some extent efficacious.¹ One needs to go but little way into the documentary history of the period from the fifth to the fifteenth centuries of our era, to find abundant examples of the way in which men bought their peace with Heaven by the surrender of temporal goods in life; or, by devoting these after death *in pios usus*, sought to escape the pains of Purgatory or the clutches of the devils that literally darkened the air about the deathbed of the departing sinner. That it was a deliberate purchase, and that they had not the slightest hesitation in clearly describing it as such, amply appears from the terms employed. Thus the charter of King Offa to the cathedral church at Worcester, A. D. 774,² begins: —

“In nomine Sanctæ Trinitatis. Ait enim Apostolus; ‘Nichil intulimus in hunc mundum, nec auferre quid possumus;’ et beatus Job; ‘Nudus egressus sum ex utero matris et nudus revertar in terram.’ Quapropter ego, Offa, rex anglorum, brevitatem vitæ ejus considerans, et quod cum his caducis mercanda esse eterna polorum regna, donabo,” etc.

It seems indeed odd that the king should decry his own title and disparage the quality of his goods when offering them as consideration for his purchase — *mercatio* — of the joys of the heavenly kingdom; and we must rather impute these terms to the monkish grantee's mode of persuading the monarch to part with his property by belittling it; for without any doubt the charter was penned by the priest and not by the king, who was probably scarcely, if at all, able to write. So in Ethelbald of Mercia's grant to Evesham Abbey, A. D. 716,³ it is said: “Caducis opibus celestis vitæ præmia mercari queamus;” in Offa's charter to Duddon, A. D. 776:⁴ “A P 8 Regnanti in perpetuum domino nostro. Jhesu Christo, Universa quippe quæ hic in præsentia visibus humanis corporaliter contemplantur nihil esse nisi vana et caduca transitoriaque ex sacrorum voluminum testimoniis verum patet, Et

¹ “The public utility of bridges caused them to be included in the somewhat elastic term of ‘pious uses.’ Thus in 1310, at Toulouse, Mathieu Aylchard is released from wearing crosses and performing certain pilgrimages on condition of contributing 40 livres tournois to a new bridge then under construction.” Lea, *Hist. Inq.* i. 474. Jusserand, *Eng. Wayfaring Life*, ch. I, gives many instances. See Besant's *London, ante*.

² 1 Birch Sax. Cart. 303.

³ Ib. 198.

⁴ Ib. 320.

tamen cum istis caducis bonis æternaliter, sine fine mansura, alta polorum regna et jugiter florentis paradisi amœnitas mercari a fidelibus viris queunt;" and again in his grant to the see of Worcester, A. D. 780:¹ "Et quod cum his transitoriis eterna mercari possunt." The almost blunt simplicity of the transactions is refreshing; they seemed to entertain no fear that the eternal price would not be paid for their "caduca," "transitoria," "mundana" bona. Instances of similar language could be multiplied indefinitely. The priestly hand in these cartularies comes out even more plainly in reinforcing the grant with a blessing and a curse at the end,—the former for those who respected it; the latter for those who interfered with it, and couched in denunciatory terms that seem to send a reverberating echo of the thunders of the Church down through the long lapse of centuries to our own day. It is a pity our conveyancers have nothing to compare with this vigorous rhetoric:—

"Qui vero minuere et per antiquam si supervenerit cartulam elidere temptaverit [says the deed to Wlhun, Bishop of Chichester, A. D. 931²], sciat semet ipsum novissima examinationis die, classica Archangeli clangente buccina, cum Juda impiæ proditiōis compilatore, infaustis quoque Judæis Christum ore sacrilego blasphemantibus æterna dampnatione, edacibus favillantium tormentorum flammis esse peritum."

So in the deed of Athelstane to Sherborne, A. D. 933:³—

"Si autem, quod absit, aliquis diabolica deceptus fraude hanc meæ liberalitatis breviculam in aliquo elidere vel impugnare temptaverit, sciat se die tremendæ districtiōis ultima, clara reboante Archangeli voce, cum Juda proditore, qui a satoris pio sato "filius perditionis" dicitur, æterna dampnatione edacibus indicibilium tormentorum flammis arsurum."

All the terrors of the Day of Judgment are thus invoked on the head of the disturber, but almost always with the significant saving clause: "nisi prius digna satisfactiōe emendare voluerit," that is, buys his peace at a rate to be fixed by the Church.

Nor was this purchase of heaven by any means limited to royal grantors, or to donations of land. Throughout the whole fabric of society the same principle obtained, and constantly there were made in testators' wills provision for the endowment of hospitals,

¹ 1 Birch Sax. Cart. 327, 329. So Caducalla to Wilfrid, A. D. 680; ib. 81.

² 2 Birch Sax. Cart. 315, 316.

³ Ib. 392. Athelstane seems particularly fond of this form of imprecatory sanction. See numerous instances, ib. pp. 318-390.

doles to the poor, erection or repair of churches or chapels therein, or at times even for the marriage of poor maidens, for relief of prisoners, repair of ways, or other objects subsequently included in the statute, side by side with the more direct provisions for the testator's security after decease by masses, candles, torches, obits, knells, months minds, and the like; by which the intercession of the Church and of the saints was bought, and the active agencies of the fiends were averted. As an illustration let us take the will of Joane, Lady Bergavenny, dated January 10, A. D. 1434.¹ It begins: —

“ Purposing, with the leave of God to dispose of such goods, as his grace hath lent me, in such use as might be to his plesauns, and profit to my soul, and all theirs that I am bounden to, I will that every parish church that my body resteth in a night, after it passeth from the place of my dying, be offered two cloths of gold and if it rest in any College or Conventual Church three cloths of gold and in every Cathedral Church, that the dean, abbot or prior have vi s, viii d. and every canon, monk, vicar, priest or clerk that is at the dirige at the mass in the morning shall have xii d; also I ordain that anon after my burying there be done for my soul five thousand masses in all the haste that they may goodly; and I bequeath to the house of said friars at Hereford in general ccc marks to find two priests perpetually to sing for my Lord my husband, my Lord my father, my Lady my mother and me. And I bequeath each friar of the same house in special for the day of my burying to pray for my soul iii s, 4 d; and I devise c marks to be ‘dalt pene-mêle’ or more after the discretion of my executors among poor men and women that come to my burying; and I ordain and devise to have five priests to sing for me twenty winters; and that of the most honest persons and good conversations that can be found. Moreover I devise cc marks to be departed among my poor tenants in England; also I devise c pounds to be disposed of within half a year after my death among bed rid men and other poor people dwelling in the lordships that I have; and also I devise that Bartholomew Brokesby and Walter Kebyll be every year at Hereford the day of my anniversary, seeing that my obit with the remnant of the obsequies be done in due wise to the profit of my soul, spending about the execution thereof at every time x pounds after their direction. Moreover I devise to the marriage of poor maidens dwelling within my lordships c pounds, and to the making and amending of ‘fabul brugges’ [feeble bridges] and foul ways c pounds; and to the finding and deliverance of poor prisoners that have been well conditioned xl pounds,” &c.

¹ Nicolas, Test. Vet. i. 224.

Robert Fabyan, retired merchant of London, and the well known chronicler of England, by his will dated July 11, 1511,¹ bequeaths —

“my soule to the infynite mercy of our Saviour J’hu Crist, and to the prayers and tucion of his moost blissid moder our Lady Seynt Mary, blissid Seynt Cristoffer, myn advowry [patron or advocate]; my corps to be buried atwene my pewe and the high awter within the qwere of the parisshe church of Alhalowen of Theydon Garnon, in the shyre of Essex; at which tyme of burying and also at the monethis mynde I will that myn executrice doo cause to be carried from London xii new torches to burne in the times of said burying and monethis mynde, and also that they do purvay iv tapers of iii lb evry pece to brenne about the corps and herse for the forsaid ii seasons; which iv tapers I wyll be holden at every tyme by foure poore men, to everych of them I wyll there be geven for their labours at either of the said ii tymes iiiii d to as many as been weddid men, and if any of theym happen to be unmarried, then they to have but iii d. apece.”

And so on, detailing with delightfully minute — if slightly tedious — particularity the trentals to be sung, by whom, and how much to be paid. He then continues: —

“vi preests to be present at myn burying and six masses to be sung; oon of requiem, oon a masse of the v wounds [of the Saviour] the iii^d a masse of thassumpcion of our Lady, the ivth a masse of all martirs, with a speciall memory of Seynt Christoffer; the vth a masse of all confessours with a speciall memory of Seynt Nicholas; the vith a masse of all virgyns with a speciall memory of Seynt Dorothe;”

thus securing the special advocacy of these three powerful saints; for of the saints of that day it might be said as of the deacons of ours: “All were good, but there were odds in saints.”

“To the either of which preests I bequeth and everych of them v d with condicioun, that at the time of the lavatory everyche of theym turne theym to the people and exorte theym to pray for the soules of Robert Fabyan and his children,” &c.,

enumerating a dozen more favored “soules” by name. Divers further bequests provide for the masses, &c., at xiii d. for each church; for a —

“knyll to be rongyn at my monethes mynde after the guyse of London, and that myn executrice doo assemble upon the said day of monethes

¹ Nicolas, Test. Vet. ii. 498.

mynde xii of the porest menys childern of said parisshe, the said childern to be ordered aboute my grave, and there knelyng to say for my soule and all Cristen soules De Profundis &c; to the which xii children I will be given xiii d, that is to meane, to the childe that begynneth the De Profundis ii d, and to everyche of the other i d."

Space forbids our giving much more of this microscopic will; but no general description would convey an idea of the minute and formal care with which every detail is set forth to ensure the prompt, punctual, and exact performance of this necessary custody of his departed "soule," so justly as his own words. To "make assurance doubly sure," there follow the most precise directions for the food to be provided for the mourners at the burial and "monethes mind," viz.: —

"competent brede ale and chese," "pieces of beffe and of moton," "xxiv treen [wooden] platers and xxiv treen sponys, with xxiv d of silver to be given unto xxiv poor persons of the saide parisshe of Theydon Garnon;" "and if my said monethes mynde fall in Lent or on a fysshe day, then I will that said xxiv peces of fleshe be altered [substitution, and not miraculous conversion being intended] unto saltfyshe or stokfyshe, unwatered and unsodeyn. [Also] to be ordeyned in spice bred vi d, and in white bennys [beans] xii d, and a kylderkyng of goode ale with viii d of chese to refresshe all comers to that obite. If it happen the said obite to fall in Lent, than I will, that for the peces of beeff aforesaid and for the chese be ordeyned pyes of elys or som other goode fyshe mete to the value of the said ii s viii d."

And so he proceeds for a dozen more pages, near the conclusion "dropping into poetry," which to the extent of nine formal verses was to "be graven at the feete of the figurys," carved on his "litell tumber of freestone," — the "figurys" being —

"ii. of a man and a woman, with x men children and vi women children [presumably his family], and over and above the said figurys I will be made a figure of the Fader in Heven inclosed in a sonne; and from the man figure I will be made on rolle toward the said figure of the Fader, and in hit to be graven O. Pater in celis; and from the figure of the woman another lyke rolle whereyn to be graven, Nos tecum pascere velis."

Not less illustrative of the times is the will of Thomas Wyn-desor, dated August 13, 1479,¹ providing carefully for his funeral and "months mind;" enjoining on his executors to have —

¹ Nicolas, Test. Vet. i. 352.

"four tapers and twenty two torches of wax, every taper to contain the weight of ten pounds and every torch sixteen pounds, which I will that twenty four very poor men and well disposed shall hold; and that every of said twenty-four men shall have for his labor at both times viii d and a gown of frize [we should think these well earned]; and that there be one hundred children, each within the age of sixteen years to say our Lady's Psalter for my soul, each of them having iiii d. for his labor;"

directing also doles to poor, and the hiring an —

"honest and well disposed priest to sing and say service during the term of twenty years after my decease and to have for his wages vi £ xiii s. iv d and find himself."

The only other will which space permits our citing is that of Sir Thomas Lyttleton, the great oracle of the law, dated August 22, 1481.¹ After bequeathing his soul to the three persons of the Trinity, "and to our most Blessed Lady and Virgin, Saynt Mary, moder of Our Lord and Jesu Christ, the only begotten sonue of our saide [sic] Lorde God, the Fader of Heven, and to Saint Christopher, the whiche our saide Lord did truste to bear on his shouldres," and prescribing that immediately after his decease "myn executors find three gode preests to singe three trentals for my soule and that everich such preest have right sufficiently for his labor," he gives —

"one hundred shelings by yere to the Priour and Covent to singe at the altar, hallowed for the worship of St George and St Christopher, daily at vii in the morning for the soules of my fader and moder and for the soule of William Burley, my fader in lawe, and for the soule of Sir Philip Chetwin [his wife's first husband], and for all soules that I am most bounden to pray, and specially for myn own soule after my decesse, and that whenever the covent sing the annual Placebo and Dirige, and Requiem for my soule, that they have vi s. viii d. for thyr disport and recreation."

And after various gifts, doles, and charities, he enjoins on his executors to —

"do their diligent labor to se that my will be performed, the which, as they know wele, the performing thereof in godely hast and tym, that shall be to the hasty remedie of my soule; and the long taryng thereof, is to the retardation of the meritts of my soul."

¹ Nicolas, Test. Vet. i. 362.

Through all these wills, as through all the mediæval testaments, sounds the keynote of salvation by church agencies at a price. Every one of these is paid for, "for the health of my soul." Nor was it confined to wills or the donations of individuals. In many of the statutes the same form obtains, and "charitable deeds to be done by their executors for the health of their souls" [thrice repeated], and that "debts remain unpaid to the great damage and perils of the souls" of the testators is the staple and burden of these enactments even as late as the reign of Henry VIII.¹ This peril of the soul was no mere phrase to them; it meant the active agency of real fiends, whose grotesque, misshapen, and frightful figures taxed the utmost inventions of art to depict; who swarmed about the death-bed, and whose audacity knew no limits,—not even the soul of the Virgin mother being exempt from their attacks; and which only the immediate and most strenuous efforts of the guardian angel and saints could repel. Mediæval art in sculpture, church-stall, and missal abounds in representations of these conflicts. As was early taught by the Fathers² the air was full of devils; one inhaled them in the act of sneezing; was beset by them in the visions of the night, or in unfrequented wastes by day; or might precipitate their malevolent agency by a wicked or even a thoughtless word.³ The blessed Reichelm, abbot of Schongau about the year 1270, had received the gift of being able to discern the aerial bodies of these creatures,⁴ and often saw them as a thick dust, or as motes in a sunbeam, or as thickly falling rain. Perhaps to-day science would call them bacteria, microbes, or bacilli. At the death of the monk of Hemmenrode we are informed that fifteen thousand demons gathered together.⁵ In the famous poem, the "Prick of Conscience," by Richard Rolle, the Hermit of Hampole, which enjoyed unbounded popularity in the fourteenth century, the picture is drawn in lurid colors:—

"For when the lyf sal pas fra a man,
To ravissche the saul with them away
Als wode Lyons thai sal than fare
And grymly gryn on hym and blere
Thai sal fande at hys last endyng
Through thretynges that thai sal mak

Devils sal gadir about hym than
To pyne of Helle if thai may
And rampe on hym & skoul and stare
And hydus braydes make hym to fere.
Hym into wanhope for to bringe
And through the ferdnes that he sal tak."

¹ Stat. Hen. VIII., ch. 4; 1 Stat. Realm, p. 285.

² Origen, Sup. Jesu Nave, Homil. xv. 5, 6.

³ Lecky, Rationalism, i. 40, 47, 89; Lea, Hist. Inquisition, iii. 380.

⁴ Cæsarius Heisterbach, Dial. Dist. iv., v., xi. 17; xii. 5.

⁵ Ib.

It is no wonder that the death-bed was their favorite scene of action; for then the soul, issuing like a homunculus from the body, started on its fearful pilgrimage,¹ naked and defenceless, unless the offices of celestial beings, promptly invoked by prayers, knells, masses, doles, and votive offerings, came swiftly to its assistance. Hence the pathetic injunction for haste which is the constant refrain of testators. Besides the expressions in the wills above quoted, Ralph Lord Cromwell² enjoins that "three thousand masses be said immediately after my decease;" Elizabeth Lady Fitzhugh,³ "in all the goodly haste that it may be." Thomas Earl of Salisbury,⁴ "one thousand masses so soon as possible after my death." Elizabeth Lady Latimer directs,⁵ "St Gregory's great trental to be said for me incontinent after my decease in all goodly haste possible." Elizabeth Countess of Salisbury:⁶ "three thousand masses with all speed after my death." Joane Lady Hungerford commands⁷ "all possible speed." Anne Duchess of Buckingham,⁸ "in all haste;" and instances of like injunctions and prayers might be multiplied indefinitely. Burial in consecrated ground, especially in the church itself and near the altar or to the chapel of some patron saint, was indispensable in the first instance, but by no means sufficed for complete protection. Sir Thomas Wyndham, knight and courageous sailor,⁹ —

"trusts that the blessed mother of Christ will, in my moost extreme nede of her infinite pitye, take my soule into her hands, and hit present unto her moost dere sonne. Also to the singular mediacions and prayers of all the holy company of hevyn, aungells, archaungells, patriarches, prophets, apostels, evangelists, martyrs, confessoures, and virgynes, and specially to myn accustomed advourys, I call and crye; Saint John Evangelist, Saint George, Saint Thomas of Canterbury, Saint Margaret, Saint Kateryn, and Saint Barbara, humbly besече you, that not only at the hour of deth soo too ayde, socour, and defend me that the auncyent & goostly enemy, nor noon other yll or dampnabell spirite have power to invade me, nor with hys tereablenes to anoye me."

¹ Hence the Viaticum derived its name, when the priest saying "*Accipe Viaticum corporis Domini*," etc., added "*hoc est sacramentum corporis Christi quod erit tibi in via hac qua gradieris robor et fulcimentum, et ambulabis per Dei gratiam in fortitudine cibi illius usque ad Montem Dei*." Sarum use, quoted in Maskell *Ritualia Eccl. Angl.* i. ccxxix.

² Nicolas, *Test. Vet.* i. 276.

⁵ *Ib.* 361.

⁸ A. D. 1480; *ib.* 356.

³ *Ib.* 212.

⁶ *Ib.* 183.

⁹ Octo. 22, A. D. 1521; *id.* 2, 579.

⁴ *Ib.* 216.

⁷ *Ib.* 181.

And he then provides for the consideration to be paid:—

“And I will have immediatlie after my decesse, as shortly as may be possible, a thousand masses to be saide within the citie of Norwich and other places within the Shire of Norfolk; whereof I will have in honor of the blessed Trinitie one hundreth, in honor of the five wounds¹ of our Savyour J^hu Christ one hundreth, in honor of the five joys of our blisshed Lady one hundreth, in honor of the nine orders of Aungells one hundreth, in honor of the Patriarchs one hundreth, in honor of the twelve Apostells one hundreth, in honor of all Saints one hundreth; of Requiem one hundreth, in honor of St John the Evangelist thirty; in honor of St George forty, in honor of St Thomas of Canterbury thirty, in honor of St Margaret forty, in honor of St Kateryn thirty, and of St Barbara thirty.”

It is not wonderful therefore that no bounds were set to the efforts to escape the “tereablenes of the yll and dampnabell spirite,” and that the Church’s intervention should be purchased at any price. Thus Lord Bergavenny’s will, April 25, 1408,² directs that “ten thousand masses be said for my soul with all possible haste after my death, by the most honest³ priest that can be found.” Joan Lady Cobham, August 13, 1369, wills⁴ that seven thousand masses be said for her soul by the canons of Tunbridge and the Friars, Preachers, Minors, Augustines, and Carmelites of London, who for so doing shall have xxiv℥ iiis. & ivd. Robert Lord Hungerford⁵ provides for “a thousand priests saying the exequies of the dead, commendations, and the seven penitential

¹ This particular subject of commemoration was a favorite one. Hence the number “five” was constantly used for the number of tapers about the coffin. See wills of Edmond Earl of March, Nicolas, Test. Vet. i. 110; William Lord Ferrers, ib. 76; William Earl of Suffolk, ib. 114; Robert Earl of Suffolk, ib. 73; James Lord Audley, ib. 117; Sir J. Montacute, ib. 124; Lady Elizabeth Audley, ib. 152; Margaret Countess Warwick, ib. 169; Elizabeth Lady Despenser, ib. 174; Elizabeth Countess of Salisbury, ib. 183; William Lord Bergavenny, ib. 171; Isabel Countess of Suffolk, ib. 193; Thomas Duke of Exeter, ib. 207; Thomas Lord St. John, ib. 214.

² Nicolas, Test. Vet. i. 171.

³ This requirement is very significant. It occurs repeatedly; see will of Lady Despenser, Nicolas, Test. Vet. i. 174; William Lord Roos, ib. 182; Elizabeth Countess of Salisbury, ib. 183; Sir J. Nevil, ib. 264; John Duke of Exeter, ib. 255; Ann Duchess of Exeter, ib. 281; Joan Lady Clinton, ib. 284; William Lord Bergavenny, ib. 171; Sir H. Stafford, ib. 324; John Lord Marney, id. 2, 626; Sir Piers Edgcomb, ib. 647; Thomas Lord Dacre, ib. 653. Its frequency indicates strongly that the priestly fraternity were not above suspicion to say the least. Cardinal Beaufort, in his will, Nicolas, Test. Vet. i. 249, even provides that the prior, etc., of Canterbury should give security.

⁴ Nicolas, Test. Vet. i. 81.

⁵ Ib. 294.

psalms;” while Richard Foulter¹ propitiates St. Romwold, in the aisles of whose church he was to be buried, by directing that:—

“a new tombe or shrine for the saide saint, where the old is now standing, be made curiously with marble, and upon the same that there be set a coffin or chest curiously wrought and gilt as it appertaineth for to lay the bones of the said saint in; and this all to be done at my cost and charge.”

It is also noticeable that this was felt as a legal obligation in favor not only of the testator but of his connections, and was discharged *ex debito justitiæ*. Thus Katherine Lady Hastings, Nov. 22, 1503,² provides that a priest shall sing “for my fadyr, and my lady my modar, my lord my husband’s soule for my soule and for all Christian soules; and in special for those soules which I am most bounden to cause to be prayed for.” “For all for whom I am most bounden to pray,” says Sir Thomas Lyttleton,³ the judge; including under that term, by a sort of collateral warranty, his wife’s former husband. So Joane Lady Bergavenny, in the will already quoted from,⁴ refers her pious bequests as made “for the profit of my own soul and all theirs I am bounden to,” whom a later enumeration shows to be her husband, father, mother, etc.; and Elizabeth Lady Abergavenny provides for a priest to pray for all her four husbands, enumerated by name.⁵

No means were neglected to defeat the machinations of the “auncient and goostly enemy of mankind.” Chief perhaps among these agencies were relics. It would require volumes to do justice to this subject. We can only point out in passing that the efficacy of these was so absolutely automatic that it mattered not how their possession was obtained. A stolen body, arm, leg, bone, or tooth of St. Denis,⁶ St Nicolas,⁷ or Venerable Bede,⁸ was as efficacious for the thief as for the true owner. Nay, such was their potency that people were healed by them against their will. Thus a twelfth-century chronicler piously narrates that when in the year 887 the relics of St. Martin of Tours were brought home from Auxerre, two cripples of Touraine, who earned an easy livelihood

¹ Nicolas, Test. Vet. i. 344.

³ *Supra*, p. 78.

² Id. ii. 450.

⁴ *Supra*, p. 75.

⁵ Will Apr. 24, 1500; Nic. Test. Vet. ii. 444.

⁶ See Translatio S. Dionysii, Pertz Mon. Germ. Hist. xiii. 343.

⁷ Odericus Vitalis, ii. 384 (Bohn ed.).

⁸ Simeon of Durham, ap. Bede’s Works, Int. xxi, xxii.

by beggary, on hearing of the approach of the saintly bones, counselled together to escape from the territory as quickly as possible, lest the returning saint should cure them, and thus deprive them of their claim on the alms of the charitable. Their fears were well founded; but their means of locomotion were insufficient, for the relics arrived in Touraine before they could get clear of the province, and they were cured in spite of themselves.¹ The belief in the genuineness of relics, as in their efficacy, was universal. Besides numerous pieces of the true cross, all authentic, — so numerous that a house or ship of respectable size could have been constructed from them, — we find, among other gifts by testators, Henry VII. devising “the precious relic of one of the legs of St George, set in silver, parcel gilt,” etc.;² and William Hante, May 9, 1462, bequeathing “one piece of that stone on which the angel Gabriel descended when he saluted the blessed Virgin Mary,” as well as “one piece of the bone of St Bartholomew to the church at Waltham, and a piece of the bone of St Nicholas to the church of Augustine Friars.”³

The motley crowd which was drawn to any one of the shrines containing these wonder-working relics was often found more numerous and variegated than desirable. The sacred spot more often than not resembled a fair or a circus, and the sharper, mountebank, or thief, found a favorable opening for the exercise of his talents; while the jongleur's strains or the performance of miracle play, or morality, entertained the throngs of credulous believers. It was no wonder, therefore, while very illustrative of the times, that when the excellent St. Thierry, former prior of Grammont, was interred, his sensible successor by mingled adjurations and threats compelled the sacred remains to desist from miracle-working, as sure to bring disorder and disrepute upon the locality which was devoted to monastic repose and the quiet of religious contemplation.⁴

The supply of relics naturally increased as the demand for them grew, and multiplication of an individual relic was always possible and sometimes necessary. Thus the accommodating Saint Teliau adjusted happily the conflicting claims of three parishes, each of which insisted on the right to inter him as a native of its district, by simply multiplying himself into three, and in this way giving each church a separate body to bury.⁵ So we find two bodies of

¹ Lea, *Hist. Inq.* i. 47.

² March 31, 1509; *Nic. Test. Vet.* i. 31.

³ *Ib.* i. 300.

⁴ Lea, *Hist. Inq.* i. 38.

⁵ Fuller, *Church Hist.* i. 64.

St. Denis the Areopagite, one at Paris and one at Ratisbonne, and each equally authentic;¹ four "vernicles" or sacred handkerchiefs of St. Veronica, each with the original imprint of our Saviour's face upon it;² two heads of St. John Baptist, one at Amiens and one at Constantinople, as we learn from the worthy Sir John Mandeville,³ who was left thereby in grievous perplexity which to adore. St. Mark is found to have no less than sixteen legs in different places;⁴ St. Catherine of Sienna also was, as Howells observes, "one of the best distributed saints on the calendar;"⁵ and the "verray true cross," which was found by the Empress Helena in A. D. 318, and distributed all over the world before 347 A. D., still existed unimpaired in Jerusalem A. D. 383, and was there worshipped by Paula, the companion of St. Jerome.⁶ In fact the supply originated from the demand; and sacred objects which had not been known to exist for centuries suddenly started into being when the ascendancy of Christianity was established under Constantine in the fourth century; and not only the pillar to which Christ was bound,⁷ with the imprint of his hand therein, made when the stone miraculously softened to receive it three centuries before, was found to glad the eyes of the faithful; not only did the milk dropped from the bosom of the Virgin still whiten the stones of Bethlehem after a lapse of five centuries,⁸ and the hairs torn from her head at the Crucifixion, reappear after ten;⁹ but even the dunghill whereon sat the patient man of Uz, the pit into which Joseph had been cast,¹⁰ the pillar of salt of Lot's wife, hay from the sacred manger,¹¹ and crystallized tears shed by the Virgin Mother¹²

¹ Pertz, Mon. Hist. Germ. xiii. 343, &c.

² Xavier's Pers. Life of Christ gives three, one each at Rome, Milan, and Jahen, in Portugal. There was one at Lucca, Piers Plowm., v. 3997 *n*. It is worthy of remark, that as late as 1529 Sir Thomas More relies on the authenticity of the vernicle to justify the worship of images. Dyalogue, p. 354.

³ Voiage et Travaille, 107, 108.

⁵ Tuscan Cities, 162.

⁴ F. P. Cobbe, "Italics," 273.

⁶ Conder, Syr. Stone Lore, 280.

⁷ Seen by Eucherius, A. D. 427-440. Conder, *ubi supra*.

⁸ John of Hildesheim ap. Chester Myst. 289. It was still seen by the Seigneur d'Anglure in the fourteenth century. Jusserand, Eng. Wayf. Life, 401. See also Ellis Orig. Lett. 3d Series, iii. 107; Hare, Walks in Rome, ii. 125.

⁹ Odericus Vitalis, iii. 179, who himself had two of the hairs. See Hare, *ubi supra*, for a choice collection of relics.

¹⁰ B. de la Brocquiere (Early Trav. Palestine, 300, Bohn). So Fra Alex. Ariosti di Bologna, A. D. 1450; apud Civezza Missioni Franciscani (Rome, 1861), v. 673. Della Valle, June 15, 1616, says, "ma io sto in dubbio."

¹¹ John of Hildesheim, Chester Myst. 300.

¹² Bertrand de la Brocquiere, 340.

emerged from the dim shades of a remote antiquity, defying the relentless touch of time, and drew crowds of credulous and adoring pilgrims to behold them.

The policy of the Church early availed itself of this infatuation, and found a fruitful source of revenue in the composition for the penance of a pilgrimage to these holy shrines. As, during the Crusades, the relief of the holy city and land was the object which stimulated all Christendom to enthusiastic effort, at times amounting to frenzy, and to the most lavish expenditure of blood and treasure, so both before and after these military efforts to rescue the sacred shrines from the dominion of the misbeliever, a pilgrimage to Jerusalem had even from the earliest day¹ enured to the satisfaction or atonement for sin. Indeed the Crusades themselves largely grew out of the interruption to these pilgrimages, which Hakim, the mad Caliph of Egypt, and later the Seljukian conquest of Jerusalem had occasioned; and, when the extinction of the Latin kingdom had made the journey too perilous for the most adventurous, a composition was accepted in lieu thereof by the pope. Similar beneficial efforts followed, though in a less degree, from a resort to Rome or the scarcely less famous shrines of Compostella in Spain, or, in England, of our lady of Walsingham or the tomb of the martyr Becket at Canterbury; and when the dying penitents could not themselves perform this pious duty a like benefit accrued from its vicarious performance by another, either a volunteer or one who was hired for the purpose. In the same accurate repository from which we have drawn so many illustrations of testamentary charity we find several instances of this practice. Thus William Lord Beauchamp, by will dated January 7, A. D. 1269,² gives "to Walter my son signed with the cross for a pilgrimage to the Holy Land on my behalf, and of Isabell, his mother, two hundred marks." Humphrey de Bohun, A. D. 1361, provides for a priest to go as pilgrim to Jerusalem;³ Sir Richard Arundel, July 8, A. D. 1417,⁴ directs that "my executors find one man who for the good of my soul shall go to the court of Rome, to the Holy Land, to the Sepulture of our Lord, &c.;" William Ponte, in A. D. 1471,⁵ bequeaths "to any of those who will pilgrim-

¹ Conder, *Syr. Stone Lore*, 279-287.

² Nicolas, *Test. Vet.* i. 50.

³ Nichols, *Royal Wills*, p. 54: also to Pontefract to the tomb of Thomas Earl of Lancaster.

⁴ Nicolas, *Test. Vet.*, i. 196.

⁵ *Ib.* 326.

age for me to St Thomas of Canterbury 12d;” and Katharine of Aragon, in A. D. 1528, provides,¹ “Item that for my soul some personage go to our Lady of Walsingham in pilgrimage and in going by the way dole xx nobles.” The magnificently mendacious Sir John Mandeville, in 1362, in taking leave of his confiding readers, after his marvellous detail of imaginary travels and fabulous monsters, invokes from heaven the benefit of his wayfaring upon them.² In consequence a class of professional pilgrims and palmers grew up whose distinctive badges were the staff and scrip, and in case of a pilgrimage to Jerusalem, the palm; or if they had visited Compostella, the scallop-shell. Statutes were passed for the protection of the pilgrims’ families in their absence. Thus an early law in Scotland provided:—

“Gif any burges is passed in pilgrimage with license of the kirk and of his neighbors to the Halie Land or to Saint James or to any other Halie place his house and all his haill proper familie sall be in the peace of the king and of the provost and baillies until God bring him home again.”³

The abuses and excesses, however, to which pilgrimages led, soon produced restrictive acts, and by statutes 5 Rich. II., c. 1, § 2; 12 Rich. II., c. 7,⁴ a license was required; of which many instances are to be found in Rymer’s *Federa*;⁵ and by an ordinance of Charles VI. of France, pilgrimage to Rome was entirely forbidden.⁶

The sale of pardons and indulgences from Rome was a traffic long known, and the trade of the pardoner was carried on from a very early day.⁷ It was a purchase for money very thinly disguised, and generally not disguised at all. Thus the Marquis Berkley, in his will Feb. 5, 1491,⁸ provides that his executors shall—

¹ Nicolas, *Test. Vet.* i. 36.

² *Voiage et Travaile*, 316: “I make hem partneres and graunte hem part of alle the gode pilgrimages . . . that I have don.”

³ *Regiam Majestatem*, p. 126.

⁴ Jusserand, *Wayf. Life Eng.* pp. 361, 362, 367.

⁵ *Ib.* p. 367; Rymer, *Fœd.* vii. p. 468.

⁶ *Recueil d’Isambert*, vi. 843.

⁷ As *Hudibras* says, i. 1495,—

“With crosses, relics, crucifixes,
Beads, pictures, Rosaries, and paxes,
The tools of working our salvation
By mere mechanic operation.”

⁸ Nicolas, *Test. Vet.* 2, 407.

"purchase a pardon from Rome as large as might be had for plain remission of sins of all those who shall be confessed and contrite at Long brigge from evensong to evensong at the feast of the Trinity, and there say paternosters and three aves for my soul," &c.

But this business was carried on on a much larger scale. Years of jubilee were ordained to be celebrated at Rome, whereto the pious pilgrim resorting should receive for his journey a remission or indulgence of sin, in greater or less measure. Such were the great jubilee of Boniface VIII. in 1300, and that of the exemplary Borgia, Alexander VI., in 1500. To all those who were unable to attend in person the further grace was extended in this latter case,¹ that, upon payment of a commutation in money to the well-beloved deputy and special ambassador of the Pope, the right reverend father in God, Jasper Pon, he in return would "absolve of all maner of crimes, trespasses, transgressions, and sins whatsoever," excepting only conspiring against the Pope, forgery of his bulls, or assaulting bishops or higher officials of the Church. The tariff charged is exactly stated at the end of this interesting document, and is graduated on the rental of the offender. The ostensible purpose was to obtain funds for a crusade against the Turks, a well-worn pretext, which was employed by Borgia's successor, Leo X. It is perhaps needless to say that the money was never so applied, and it was only the secular arms of Hunniades, Sobieski, or Corvinus, or the unfeed services of the Knights of St. John at Rhodes and Malta that were found to rescue Christendom from the victorious hordes of Mahomet and the navies of Solymán.

The growing addiction to the superstitious worship of relics and idle pilgrimages, with their gross excesses and inevitable liability to perversion and abuse, through the vicious practice of a money commutation² or of an indulgence sold at a price,³ thus doubly defeating the true action and natural objects of charity, early received the animadversion of those who sought to reform the Church

¹ See this indulgence in full text, Lett. Rich. III. and Hen. VII. ii. 93. It was Clement VI., circa 1350, who first formulated the treasury of merits theory. Jusserand, Eng. Wayf. Life, 311; Migne, Nouv. Encyc. Theol. xxvii. 183-184.

² Lea, Hist. Inq. i. 40-47; 471-480. And this was enforced against the estate of a heretic after death, sometimes after a lapse of three or four generations. *Ib.*

³ It was condemned by Pope Boniface IX. See Bull of 1390 against pardoners who sell indulgences from vows for pilgrimages, but take small sums which they do not remit; concluding "Horret et merito indignatur animus talia reminisci."

Baronius Annales Eccl. Raynaldi, continuatio, vii. 525. Jusserand, Eng. Wayf. Life, 435.

from within. In his tract "About Images and Pardons" (circa 1383), Wicliff says:¹—

"But we spekyn over litel for to visete and offre to pore men; and maken broken briges and causeis [causeways] where men and bestis and catel perischen ofte. But gif any man foolily avowen to go to Rome or Jerusalem, Canterbury or other pilgrimadis that we chargen more than the grete avowe maad of our Christendom to kepe Goddis hestis and forsake the fend and alle his warkis. For though men breken the hieste commaundementis of God the lewideste [most ordinary or humblest] parissche preest schal assoile anoon; but if the founed vowis maad of our oure owene heed, many time agenus Goddis wille, noman schal assoile, but greet worldly bischopis, or the most worldly preest of Rome, the emperors maister, and Goddis felawe, or God upon earth; and they wolen not dispense with these vowis, but gif they han the cost that men schulden make inward and outward."

So Langland, among the motley crowd that throng the "fair feeld" of life describes² the

"Pilgrymes and palmeres, plighen hem togidere,
For to seken seint Jame, and seintes at Rome.
They wenten forth in hire wey, with many wise tales,
And hadden leve to lyen al hire lif after.
I seigh some, that seiden, thei hadde y-sought seintes;
To ech a tale that thei tolde, hire tongue was tempred to lye,
Moore than to seye sooth, it seemed bi hire speche.
Heremytes on an heep, with hoked staves,
Wenten to Walsyngham, and hire wenches after.
Grete lobies and longe, that lothe were to swynke,
Clothed hem in copes, to ben knowen from othere,
And shopen hem heremytes, hire ese to have.
Ther preched a pardoner, as he a preest were,
Brought forth a bulle, with many bisshopes seles,
And seide that hymselfe myghte assoillen hem alle,
Of falshede of fastynge, of avowes y-broken."

So in repeating the story of Emperor Trajan, whom he calls Trojanus, — so favorite a legend of the middle ages that Dante represents it as carved on the walls of Purgatory,³ — he makes the redeemed emperor say:⁴—

¹ Works, iii. 283.

² Piers Plowman, vv. 91-142 (Wright ed.).

³ Dante Purg. x. 73-93.

⁴ Piers Plowman, vv. 6864-82 (Wright ed.).

“ Clerkes wite the sothe,
 That all the clergie under Crist ne myghte me cracche fro helle,
 But oonliche love and leautee, and my lawful domes.
 Gregorie wiste this wel, and wilned to my soule
 Savacion for soothnesse that he seigh in my werkes ;
 And after that he wepte and wilned me were graunted
 Grace ; withouten any bene biddynge his boone was underfongen,
 And I saved, as ye see, withouten syngynge of masses.
 By love and by lernynge of my lyvyng in truthe,
 Broughte me fro bitter peyne, ther no biddynge myghte.”

The poet adds : ¹ —

“ Nought thorough preiere of a pope, was that Sarsen saved,
 But for his pure truthe, as Seint Gregorie bereth witnesse.”

Again he says : ² —

“ Right so if thow be religious renne thow never
 Further to Rome ne to Rochemadour.”

Even earlier than Wiclif of Langland, the Archbishop of York, William Greenfield, had in 1313, repressed sharply the attempt to draw resort to a local shrine — Foston in Yorkshire — by setting up a claim that the local image of the Virgin had a peculiar sanctity whereby, as the prelate says,³ there was a “ *magnus simplicium concursus ac si in eadem plus quam in aliis similibus imaginibus aliquid numinis apparet.*”

The sturdy spirit indicated by these and like protests was not long in bearing fruit, and it is noticeable how soon more practical and public, as distinguished from selfish, superstitious, and individual, began to be the subjects of charitable devise and bequest during the fifteenth and sixteenth centuries, until they broadened into the comprehensive legislation of the Statute of Elizabeth. Thus in the will of Lady Bergavenny already referred to,⁴ we find with the masses prescribed, donations to the Church and its priests, and provisions for the repair of the holy structures, not only doles to the poor at her burying and alms to other poor, but appropriations for the “ *marien*” of poor maidens, relief of poor prisoners, and even for the practical public duty of making and amending “ *fabul brugges and foul wayes.*” The poor, indeed, had always from the earliest days of Christianity been a charity, but the matters of larger public benevolence or concern were later. It is true that

¹ Piers Plowman, vv. 6387-90 (Wright ed.).

² B. xiii. 37 (Skeat ed.).

³ Jusserand, Eng. Wayf. Life, 346.

⁴ Nicolas, Test. Vet. i. 224.

even as early as the will of Henry II., A.D. 1182,¹ bequests are found "towards the marriage of poor and free women of England wanting aid ccc marks of gold; towards the marriage of poor and free women of Normandy wanting aid c marks of gold and towards the marriage of poor and free women of the land of my father the Earl of Anjou c marks of gold;" but gifts for a like object do not become frequent till long after, in the fifteenth century.² So provisions for the relief of poor prisoners are found in the wills of Thomas Duke of Exeter, December 29, 1426;³ Cardinal Beaufort, January 20, 1446;⁴ William Hante, May 9, 1462;⁵ Richard Berne, April 20, 1461;⁶ Sir Thomas Bryan, February 7, 1495;⁷ Sir William Fitzwilliam, May 28, 1534;⁸ and Sir Thomas Hastings, March 28, 1558;⁹ while the repair of ways and bridges, besides the various instances already given in wills,¹⁰ is mentioned in the striking and popular poem of the Child of Bristowe,¹¹ circa 1400, —

"Largely he did hem geve, wayes and brugges for to make, —"

as an efficient means whereby the pious child ransoms the condemned soul of his avaricious sire.

We need indeed only to contrast the substantial good sense and excellent testamentary dispositions of two of the testators just named, Sir William Fitzwilliam and Lady Alice Wyche, with the wild superstitious terror of the will of Sir Thomas Wyndham, or the elaborate and selfish minuteness of that of Robert Fabyan, already given, to see how considerable an advance had been made in the direction of the statute. It is true that Lady Alice's dispositions are said to be "for my soul and other souls as aforesaid;" but besides bequests to relatives, the principal gifts are to —

"poor husbands, ploughmen of the county such as have wives and children, and poor widows, to poor householders to have every of them a milch cow and xiii s iv d and in marriage of poor maidens of good conversation in the county and in mending the highways cc £."

¹ Nicolas, *Test. Vet.* i. 2-4.

² Wills of Sir Thomas Sackville, December 1, 1432, *ib.* 221; of Cardinal Beaufort, January 20, 1446, *ib.* 249; of Lady Alice Wyche, June 16, 1474, *ib.* 336; of Henry Hatche, May 6, 1533, *id.* ii. 661; of Sir William Fitzwilliam, May 28, 1534, *ib.* 665; of Richard Foulter, 1473, *id.* i. 344; of Richard, Earl of Salisbury, May 10, 1458, *ib.* 286.

³ Nicolas, *Test. Vet.* i. 207.

⁶ *Ib.* 292.

⁹ *Ib.* 750.

⁴ *Ib.* 249.

⁷ *Id.* ii. 449.

¹⁰ *Ante.*

⁵ *Ib.* 300.

⁸ *Ib.* 665.

¹¹ Hazlitt, *Early Pop. Poetry*, i. 119, vv. 213-14.

From this general sketch of the sources and early characteristics of *cy près*, so tersely summarized in the phrase of C. J. Wilmot, with which we began this article and which had become a tradition in his day, the grounds of his succinct statement may perhaps be more clearly apparent. As, in those earlier ages, pious donations were the price paid to heaven or to its more exacting broker, the Church, for its favor; "one kind of charity" would indeed have "embalmed the testator's memory, as well as another;" for his intent was not the application of the purchase-money, but the delivery of the goods purchased. We have in fact done little more than illustrate in detail the views concisely given in the rest of C. J. Wilmot's judgment: —

"The right of the heir at law," he says, "seems to arise as naturally in this case as in any other. But instead of favoring him as in all other cases, the testator is made to disinherit him for a charity he never thought of, — perhaps for a charity repugnant to the testator's intention, and which directly opposes and encounters the charity he meant to establish. But this doctrine is now so fully settled that it cannot be departed from, and the reason upon which it seems founded is this: The donation was considered as proceeding from a general principle of piety in the testator. Charity was an expiation of sin and to be rewarded in another state; and therefore if political reasons negatived the particular charity given, this court thought the merits of the charity ought not to be lost to the testator nor to the public, and that they were carrying out his general pious intention; and they proceeded upon a presumption that the principle which produced one charity would have been equally active in producing another, in case the testator had been told that the particular charity he meditated could not take place. The court thought one kind of charity would embalm his memory as well as another, and being equally meritorious would entitle him to the same reward."

While it certainly cannot be denied that this conclusion derives logically from the origin of *cy près*, and that the testator's paramount object being salvation, the means were immaterial, yet that such a doctrine should not only have survived the state of society and of belief in which it originated, but also have been developed into an integral part of the jurisprudence of a social order and faith radically diverse, may occasion surprise. And a doubt may arise whether in administering it, the peculiar circumstances of its beginning and development — we might indeed say the necessary conditions of its existence — are borne in mind; or whether it is considered that the modern testator, not intending

a purchase of heaven with his "bonis caducis" but a specific bequest to a specific charity, may be presumed to have known not merely what he intended, but what he did not intend, in the case of a charity, as well as of any testamentary disposition made by him; or that the court in imputing to him what he did not say, because he might have said it, may not run some risk of making him say what he would have emphatically repudiated.

Joseph Willard.